

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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PAMELA LYLES

v.

RICHARD STOLKER

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Civil No. JFM-03-2131

MEMORANDUM

Pamela Lyles has instituted this *pro se* action against Richard Stolker, the court appointed lawyer who represented her on her unsuccessful appeal of her criminal conviction in the United States Court of Appeals for the Fourth Circuit. Although she does not expressly so state in her complaint, plaintiff appears to be asserting claims for malpractice against Stolker. Stolker has filed a motion to dismiss or for summary judgment. Plaintiff has responded to the motion. The motion will be treated as one for summary judgment and will be granted.

To the extent that plaintiff claims that Stolker failed to file, as she requested, a motion with the Fourth Circuit seeking her release pending appeal, the short answer is that the motion would have been frivolous and would not have been granted by the Fourth Circuit. Therefore, the failure to file the motion did not breach any applicable standard of care and did not result in any harm to plaintiff.

To the extent that plaintiff claims that Stolker's representation was inadequate and resulted in the affirmance of her conviction, her claim is barred by precedents (decided both by the Maryland and Federal courts) holding that a plaintiff may not file a malpractice action against an attorney for alleged inadequate representation until and unless her criminal conviction has been set aside. *See, e.g., Berringer v. Steele*, 758 A.2d 574 (Md. Ct. Spec. App. 2000); *Levine v.*

*Kling*, 123 F.3d 580 (7th Cir. 1997); *Parris v. United States*, 45 F.3d 383, 384 (10th Cir. 1995).

A separate order granting Stolker's motion and entering summary judgment on his behalf is being entered herewith.

Date: October 16, 2003

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J. Frederick Motz  
United States District Judge

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ORDER

For the reasons stated in the accompanying memorandum, it is, this 16th day of October  
2003

ORDERED

1. Defendant Richard Stolker's motion to dismiss or for summary judgment is treated as one for summary judgment and, as such, is granted; and
2. Judgment is entered in favor of defendant against plaintiff.

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J. Frederick Motz  
United States District Judge

